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Before the
Federal Communications Commission
Washington, D.C. 20554

FEB 17 1998

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In the Matter of:

Petition for Declaratory Ruling and
Request for Expedited Action on
July 15, 1997 Order of the Pennsylvania
Public Utility Commission Regarding
Area Codes 412, 610, 215 and 717

NSD File No. L-97-42

Implementation of the Local Competition:
Provisions of the Telecommunications Act
of 1996

CC Docket No. 96-98

**REPLY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION TO
OPPOSITIONS TO ITS PETITION FOR RECONSIDERATION**

The Pennsylvania Public Utility Commission (PaPUC) files this reply to oppositions to its
Petition for Reconsideration of the Federal Communications Commission's September 28, 1998
Memorandum Opinion and Order and Order on Reconsideration (*Pennsylvania Order*) in the
above-captioned matter. The PaPUC reaffirms its previous position and addresses various points
in opposition.

In seeking reconsideration of the *Pennsylvania Order*, the PaPUC suggested that the
Federal Communications Commission (FCC) delegate to the PaPUC additional authority over
numbering issues under an "optional" model. Specifically, the PaPUC believes that industry and

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NANPA must be required to address conservation methods prior to the implementation of area code relief,¹ that industry and NANPA must be develop procedures to ensure the return of central office codes when necessary and appropriate, and that the PaPUC should have the option of managing number conservation and area code problems, including an "optional appeal" on any NANC-NANPA-Industry determinations affecting a party's business interests in Pennsylvania, in the event industry is unwilling or unable to take effective action or such action is necessary in the public interest.

The PaPUC proposes this optional authority approach in order to prevent unnecessary area code splits and to promote the public's acceptance of those area code splits that are critical to an evolving telecommunications industry. Members of industry oppose PaPUC authority generally and complain that the PaPUC is responsible for unnecessary delays in the availability of numbering resources. These opponents suggest that the FCC should dictate to the PaPUC what the PaPUC must do and when it must do it.² These opponents, however, do not explain the industry segment's failure to accurately forecast its need for numbers, its failure to consider and implement reasonable conservation methods, and its failure to exercise administrative control consistent with its own Industry Numbering Committee's Central Office Code (NXX) Assignment Guidelines. Moreover, these opponents ignore the very real fact that, at least in Pennsylvania, industry's own neutral administrator refuses to evolve into a neutral adjudicator of area code problems and prefers to leave that problem to the PaPUC.

¹ Rate center consolidation is one of a myriad of reasonable conservation measures that the PaPUC must consider. The PaPUC recognizes that some measures may not be effective or appropriate in all areas. However, the PaPUC may not be able to even consider such conservation methods under the current administrative structure.

² For example, Sprint PCS recommends that the state commissions be allotted four months from the date a relief plan is filed to adopt a final relief plan and that carriers "appeal" a state decision to the FCC.

Consideration must be given to the respective roles of the FCC and the PaPUC in these matters. It is the FCC's responsibility to address numbering administration in the United States. 47 U.S.C. § 251(e)(1). It is the PaPUC's responsibility to insure that jurisdictional local exchange telecommunications companies furnish adequate, efficient, and reasonable telecommunications service for the accommodation, convenience, and safety of all Pennsylvanians.³ Consistently, the PaPUC has worked cooperatively with the FCC in order to fulfill our respective responsibilities. It must not be forgotten, however, that the FCC is not authorized to compel the service of the PaPUC. This response to our prior efforts and the tone adopted by opponents to our current request for additional authority is unfortunate and unnecessary.

The most unfortunate aspect of this dilemma is that some industry members have been unwilling to move towards the actual development of technology that would enable the assignment of numbers in a more efficient manner. Instead of expeditiously pressing forward on matters well within its own control--such as the adoption and implementation of national guidelines--a stalemated industry's approach has been to cry loudly when it is faced with an exhaust situation, yet oppose any creative measures suggested by the PaPUC to alleviate the very situation about which industry cries. Industry's position here is completely contradictory.

Industry opposes giving the PaPUC additional authority, citing the historical "delay" factor. However, when given the opportunity to arrive at a consensus which would result in the most expedient method of area code relief, except in the case of the original geographical split of 215, creating 610, industry itself has failed to grasp its opportunities to avoid the very problem

³ See, e.g., Pennsylvania Public Utility Code, 66 Pa. C.S. § 1501 (addressing character of service and facilities furnished and maintained by public utilities in Pennsylvania.)

about which it complains now. Industry's preference has been to place the problem in the laps of PaPUC which has limited resources, expertise, and above all jurisdictional authority to solve the crises which have arisen due to industry's refusal to control that which is within its own control.

Moreover, NANPA's response is similar to industry. NANPA consistently cites its "neutral" function in support of a refusal to even submit any waiver to address problems created by the industry NANPA "neutrally" represents. For example, in Pennsylvania, NANPA refuses to submit a wavier petition to the FCC regarding the release of NXXs reserved for new entrants. However, NANPA has clearly indicated its willingness to assume complete responsibility for allocating those NXXs *after the PaPUC submits the necessary waiver before the FCC as a "neutral" state regulator*. Finally, the very "guidelines" NANPA would use to administer the NXX allocations are opposed by significant market entrants as "anti-competitive" because of their focus on area code exhaustion as opposed to rate center exhaustion.

Contrary to Vanguard's position, the PaPUC does not plan to "avoid area code relief indefinitely, regardless of the consequences." Comments (in Opposition) of Vanguard Cellular Systems, Inc., at 4. The PaPUC has not hesitated to require area code relief when it is necessary, unavoidable, and in the public interest. It must be recognized, however, that current industry practices often require unnecessary area code relief in an expensive manner that generates intense public controversy. That is because many forms of area code relief are more attributable to industry recalcitrance than any true public need. The PaPUC's approach in its reconsideration petition attempts to address that problem by constructing a line between federal and state concerns as well as industry and government needs.

For example, recent data collected in Pennsylvania demonstrates that at least forty percent (40%) of available numbers are not being used. (See Appendix A).⁴ Also, central office codes are being allotted far more quickly than the actual numbers are being used. On its face, the allocation of the public numbering resource lacks efficiency. As competitive local markets develop, there may be a legitimate need for the rapid consumption of central office codes without a concomitant consumption of available telephone numbers. The PaPUC is skeptical that area code relief is always necessary and unavoidable in the current circumstances.

A key factor to consider when evaluating the efficiency and effectiveness of the current numbering administration process is whether the North American Numbering Plan Administrator (NANPA) is capable of providing the leadership necessary to promote efficient and effective management of the central office code numbering resource. For example, NANPA recently refused to submit a waiver for petition from the FCC's regulations governing the reservation of NXXs for new entrants. That refusal negated NANPA's evolution into a neutral administrator of scarce NXX resources. The net result was that the *PaPUC was left as the sole remaining entity "eligible" to submit the waiver needed to address the problem of NXXs during implementation area code relief. The PaPUC is forced to resolve this industry-created problem despite the consistent claim of industry and NANPA that the PaPUC has no business in the management of scarce public numbering resources.*

⁴ Certain numbering information is collected by the PaPUC, including fill rates. NANPA supplies other information, upon request.

Information that we lack, absent a request, includes information on whether any particular new entrant has an allotment of central office codes. Such information is of particular interest when a new entrant discontinues service. On February 11, 1999, for example, the PaPUC approved US One Communication Corp.'s application for certificate of public convenience to discontinue services as a competitive local exchange service provider. (Pa PUC Docket No. A-310469 F2000.) US One may have an allotment of central office codes that should be reassigned.

Despite this criticism of the PaPUC, however, industry regularly turns to the PaPUC for a remedy when they cannot get satisfaction from NANPA. For example, on February 5, 1999 PaPUC staff members participated on a conference call convened by NANPA to address 215 NPA Jeopardy Procedures. Industry participants indicated that a petition should be filed with the FCC for expedited waiver of the 90-day rule on new entrant codes. NANPA refused to undertake the task of filing a waiver on the grounds that the filing of a waiver is not a "neutral activity" and is inconsistent with NANPA's role. Industry participants now urge the PaPUC to file the petition so that *incumbent carriers have access to the scarce numbering resources set aside for new entrants.*

Like NANPA, the PaPUC considers itself to be a neutral entity. The PaPUC, however, is a neutral adjudicator that exercises independent judgment in making difficult decisions under our statutory obligation to preserve and promote the public interest. However, our experience to date is that NANPA is unwilling or unable to take the measures needed to further the efficient use of numbering resources as a *neutral adjudicator*. Neither the PaPUC nor the NANPA is empowered or authorized to scrutinize industry's consumption practices regarding scarce public numbering resources. Claims that the the PaPUC should *not have that authority* is belied by the actions at the state level -- especially in light of NANPA's refusal to become a neutral adjudicator.

Consequently, the PaPUC urges the FCC to take the action needed for industry and NANPA to address the current practices in the administration of scarce public numbering resources. A part of that action must include authorizing the PaPUC to manage scarce numbering

resources when industry is unwilling or unable or it is necessary to prevent harm to competition or the public interest.

In the event that industry is unwilling or unable to assume that responsibility (as has just occurred in Pennsylvania), the PaPUC urges the FCC to empower the PaPUC with that authority. With such effective authority, the PaPUC is willing to manage area code problems. Without such effective authority, the PaPUC is not willing to continue devoting scarce time and resources in an area where authority is nonexistent.

Another key factor to consider in regard to the PaPUC's position is whether industry is requesting NXXs codes in a manner that produces an efficient use of numbering resources sufficient to avoid unnecessary and costly area cost splits. For example, under the current system, the PaPUC collects numbering information, including fill rates while NANPA supplies other information upon request. The limited information the PaPUC does have indicates that new entrants request NXXs in blocks of 10,000 without regard to the actual number of customers served.

Such inefficient and ineffective allocation of the public numbering resources remains a concern of the PaPUC. This concern is immediate, as we are seeing in the Pittsburgh area where area codes are being consumed at a rate far in excess of the number of customers or residents, and is more fully addressed in our Petition for Reconsideration.

As acknowledged by the FCC in the *Pennsylvania Order*, the PaPUC has made commendable efforts to resolve numbering cases brought before us. Obviously, these efforts have consumed the PaPUC's internal resources and have spotlighted the PaPUC (not the FCC and not

any particular member of industry) in the eyes of the public (a public clamoring for relief from the costs of area code relief). The PaPUC, for its part, has resolved one carrier's need for numbers by working with industry, and NANPA, to address the problem and reach an effective solution -- after several months and many hours of scarce Commission time.⁵

The FCC has delegated to the PaPUC a discrete and specialized portion of its jurisdiction over numbering. However, the PaPUC needs additional authority in the management of numbering resources in the event, as recently happened in Pennsylvania, industry and NANPA are unwilling or unable to take the actions necessary to manage area code problems. That is necessary not only because the PaPUC has a unique understanding and familiarity with local circumstances but also because the PaPUC is concerned about whether the FCC can *timely* implement and address intricate area code relief problems.⁶

In authorizing the PaPUC to resolve matters involving the introduction of new area codes within their states, the FCC recognized that commission like the PaPUC face a "difficult task." *Pennsylvania Order*, at Para. 2. However, the PaPUC is increasingly reluctant to manage this contentious and complicated area with little authority by the FCC to effectively resolve the problems facing the PaPUC on a daily basis.

When the FCC delegates authority to the PaPUC, it must delegate a quantity sufficient to accomplish stated objectives. When addressing an industry request for area code relief, the

⁵ For example, several Commissioners' assistants, lawyers, and telecommunications specialists have worked since September 1998 until the current time. The net result to date is industry's agreement to provide one NXX to one carrier and the development of controversial "allocation guidelines" for allocating all the NXXs reserved for new entrants *provided the PaPUC submits the required waiver request to empower industry to act without any subsequent accountability to the PaPUC.*

⁶ Sprint PCS Opposition, at 18.

PaPUC should be free to exercise its judgment, consistent with federal law, and order conservation/optimization measures or reclamation prior to deciding on a specific form of area code relief, if, in the judgment of the PaPUC, such action is appropriate under the particular circumstances.

Some opponents argue that PaPUC does not need additional authority because the *Pennsylvania Order* provides a mechanism by which the PaPUC may pursue conservation measures; the PaPUC may petition the FCC for authority. Opposition of Nextel Communications, Inc., at 13; Opposition of Bell Atlantic Mobile, Inc., at 11. This "Mother May I?" approach is the antithesis of the independent and autonomous nature of the PaPUC. Moreover, this permissive approach does not provide for the expedient conservation measures needed to assist in the efficient use of scarce numbering resources. A far better alternative must be found. Industry's reply comments to the PaPUC merely criticize without proposing a viable structural alternative other than continuation of the current outmoded numbering system.

For the above reasons and for the reasons set forth in our Petition for Reconsideration, the PaPUC believes that the reply comments should be dismissed and that reconsideration of the *Pennsylvania Order* is required.

Respectfully submitted,

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

By its counsel:



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Dated: February 16 , 1999

NPA	Total NXXs	Total TNs Available in Area Code	Number of Used (Committed)	Number of Unused (Uncommitted)	Pct. Committed*	Pct. UnCommitted*
215	690	6,900,000	4,529,676	2,370,324	66%	34%
412	407	4,070,000	2,453,130	1,616,870	60%	40%
610	648	6,480,000	3,681,956	2,798,044	57%	43%
717	693	6,930,000	3,964,603	2,965,397	57%	43%
724	339	3,390,000	1,437,684	1,952,316	42%	58%
814	311	3,110,000	1,395,656	1,714,344	45%	55%
Totals	3,088	30,880,000	17,462,705	13,417,295	57%	43%
* These percents are based on the NXXs assigned in the area code. They are not a reflection of exhaust, but can be thought of as a reflection of efficiency.						
**TN = Telephone Numbers						

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**MEETING NOTES OF FOURTH INDUSTRY JEOPARDY CONFERENCE CALL TO
REOPEN PREVIOUSLY AGREED 215 NPA JEOPARDY PROCEDURES
February 5, 1999**

WELCOME AND INTRODUCTIONS

Pamela Kenworthy, NPA Relief Planner – NANPA, welcomed everyone and asked the conference call participants to introduce themselves and identify the companies they represented. See Attachment # 1 for names of those who attended the February 5, 1999 conference call.

REVIEW OF JANUARY 25, 1999 CONFERENCE CALL MEETING NOTES

Participants reviewed the draft meeting minutes from the January 25, 1999 conference call and approved the minutes indicating two typos and one clarification that will be included with the final notes regarding the composition of the pool of codes that could be assigned.

FUTURE NEEDS OF POTENTIAL CODE HOLDERS

George Light, Pennsylvania CO Code Administrator – NANPA, reviewed the updated chart that was included with the January 25, 1999 meeting notes. He indicated that since the last conference call, CO Code Administration received another valid NXX request and the total number of codes set aside is now 22. It was also noted that the CO code 800 is still available.

A question was raised regarding the remaining seven service providers who were in the 'Unable to Reach' category. NANPA CO Code Administration will provide an analysis that includes the 3 facilities based service providers on the next conference call and provide a market overview according to the Pennsylvania Commission approval data. See Attachment # 2.

215 NPA NXX STATUS REPORT

An inquiry regarding the reason for codes 500 and 900 were reserved for special use was made. In addition, it was questioned why future and current adjacent NPA codes, the current home NPA codes and the 809 code were reserved. At the end of the discussion it was agreed to retain these codes on the reserved list, but each service provider has an action item to report on the next conference call to discuss the possibility of releasing 500 and 900.

GUIDELINES TO ADDRESS CARRIERS' EMERGENCY NUMBERING NEEDS

A contribution from Sprint PCS was discussed as a result of an action item from the last conference call when industry participants were requested to define 'imminent exhaust'. Participants modified these guidelines for the 215 NPA (see attachment # 3) and reached consensus on the following to address carriers emergency numbering needs. Upon imminent exhaust of all numbering resources in the 215 NPA, a carrier may apply to NANPA for an additional NXX code from those codes set aside for new carriers.

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Statement for the Record from Sprint PCS

Sprint PCS objects to the industry plan to only allow carriers to request codes when facing imminent exhaust in the NPA and not a rate center.

FCC EXPEDITED WAIVER OF ITS 90-DAY RULE

Participants discussed the 'ARGUMENTS IN FAVOR OF PA PU-REQUESTED FCC EXPEDITED WAIVER OF ITS 90-DAY RULE ON NEW ENTRANT CODES' (see Attachment # 4) however, the Commission Staff stated that it was not likely that the Pennsylvania Public Utility Commission would file such a waiver. It was also noted by Bruce Bennett, Regional Director, Code Administration, that NANPA would not undertake the task of filing a waiver. He further stated that filing a waiver is not considered a neutral activity because filing a waiver requires advocacy or taking a position based on law or fact and therefore NANPA will not file a waiver on this matter. However, the participants reached consensus and the Commission Staff concurred that the work that has been completed to date is valuable and should be reviewed by the PUC especially as a result of the additional research that has been divulged and the intricate definition of imminent exhaust.

Statement for the Record from Sprint PCS

Sprint PCS objects to placing the remaining 23 new entrant codes, which is now 22, into one pool of NXX codes for assignment to new entrants and carriers facing imminent exhaust based on today's consensus decision that imminent exhaust be based on the exhaust of numbering resources by NPA. We believe that there is sufficient evidence to reduce the pool size based on the analysis of potential new entrant demand.

The industry participants requested that NANPA distribute via facsimile the February 5, 1999 conference call meeting notes to Commission Staff under separate cover immediately upon completion and then to the industry. The Staff will then forward this to the Pennsylvania Public Utility Commission and provide a status report regarding the possibility of filing a waiver based on additional information included with these meeting notes during the next scheduled conference call.

SPRINT PCS' REQUEST FOR AN ADDITIONAL NXX CODE

Sprint PCS inquired whether NANPA would assign NXX 800 without industry consensus. Since it was nearing the end of the conference call, many of the participants had to leave the conference call and Sprint PCS requested that their Statement for the Record from the previous conference call minutes be carried over to this meeting record since it has not been addressed.

Statement for the Record from Sprint PCS

The industry agrees to release the NXX code of 888, which is not in the new entrant pool, to Sprint PCS in the 215 NPA, to relieve in part, Sprint PCS' emergency numbering needs. The industry will work together to study the demand for new entrant codes and in one months time the industry will reconvene to discuss the disposition of the remaining

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new entrant NXX codes and the NXX of 800. Sprint PCS does not withdraw its request for an additional NXX code, but that issue will be addressed at the next meeting.

CONFERENCE CALL TO APPROVE THE MEETING MINUTES and NEXT MEETING

A conference call to approve the February 5, 1999 meeting notes is scheduled for February 16, 1999 at 1:00 p.m. Eastern. Discussions regarding 215 NPA jeopardy procedures will continue and action items will be reviewed. It was agreed that the draft meeting notes would be distributed by February 10, 1999 to all industry members. Dial Information: (612) 337-9884 (7045*). The call is expected to last no longer than three hours.

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CERTIFICATE OF SERVICE

I, Maryanne Reynolds Martin, hereby certify that I have on this 16th day of February, 1999, served an original and fourteen true and correct copies of the Reply of the Pennsylvania Public Utility Commission to Oppositions to its Petition for Reconsideration upon the Secretary of the Federal Communications Commission by Federal Express and that I have served a true and correct copy of the Petition upon the other persons listed below by first class mail:



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